

**Recording Requested By:**

- CBE, LLC
- Martin Dodd
- Organizer
- c/o TRC Environmental Corporation
- 21 Griffin Road North
- Windsor, CT 06095

**2006-13527-8**

Recorded — Official Records  
**Humboldt County, California**  
Carolyn Crnich, Recorder

Recorded by TRC ENVIRONMENTAL CORP

Rec Fee 28.00

Clerk: LH Total: 28.00

May 8, 2006 at 15:37

**CONFORMED COPY**

**When Recorded, Mail To:**

- Catherine E. Kuhlman, Executive Officer
- California Regional Water Quality Control Board
- North Coast Region
- 5550 Skylane Boulevard, Suite A
- Santa Rosa, CA 95403

**N C R W Q C B**

**MAY 22 2006**

<input type="checkbox"/> EO	<input type="checkbox"/> WMgmt	<input type="checkbox"/> Admin
<input type="checkbox"/> AEO	<input type="checkbox"/> Timber	<input type="checkbox"/> Legal
<input type="checkbox"/> Reg/NPS	<input type="checkbox"/> Cleanups	<input type="checkbox"/> Date

**COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY**

(Former) Unocal Terminal  
1200 Railroad Avenue  
Eureka, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 7th day of April, 2006 by CBE, LLC ("Covenantor") who is the Owner of record of that certain property situated at 1200 Railroad Avenue, in the City of Eureka, County of Humboldt, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such portion hereinafter referred to as the "Property"), for the benefit of the California Regional Water Quality Control Board for the North Coast Region (the "Board"), with reference to the following facts:

- A. The Property and groundwater underlying the property contains hazardous materials.
- B. Contamination of the Property. Soil at the Property was contaminated by daily use of a bulk petroleum storage facility conducted by UNOCAL. These operations resulted in contamination of soil and groundwater with organic chemicals including Total Petroleum Hydrocarbons (TPH) as gasoline, TPH as diesel, TPH as motor oil, TPH as Bunker C, benzene, toluene, ethylbenzene, MTBE, xylene, trichloroethylene, and vinyl chloride, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Active remediation is under way at the site for the dissolved plumes of gasoline, diesel, trichloroethylene, and vinyl chloride, and will continue for at least the next 15 years. The separate phase plume of Bunker C does not have a technologically achievable remedy. This plume will remain at the site for the foreseeable future.
- C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Property. Without the mitigation measures which have been performed on the Property, exposure to these contaminants could take place via: in-place contact, surface-water runoff, groundwater to surface water migration, and wind dispersal, resulting

in dermal contact, inhalation, or ingestion by humans, and other sensitive ecological receptors. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

- D. Adjacent Land Uses and Population Potentially Affected. The Property is used for bulk petroleum storage and is adjacent to industrial and commercial land uses.
- E. Full and voluntary disclosure to the Board of the presence of hazardous materials on the Property has been made and extensive sampling of the Property has been conducted.
- F. Covenantor desires and intends that in order to benefit the Board, and to protect the present and future public health and safety, the Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Property.

## ARTICLE I GENERAL PROVISIONS

- 1.1 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "Restrictions") upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the Board and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Property unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of the Restrictions are enforceable by the Board.
- 1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the Board and the Owners and Occupants of the Property and that the interest of the Owners and Occupants of the Property shall be subject to the Restrictions contained herein.
- 1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

- 1.4 Purpose. It is the purpose of this instrument to convey to the Board real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

- 2.1 Board. "Board" shall mean the California Regional Water Quality Control Board for the North Coast Region and shall include its successor agencies, if any.
- 2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.
- 2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Property.
- 2.4 Owner or Owners. "Owner" or "Owners" shall mean the Covenantor and/or its successors in interest, who hold title to all or any portion of the Property.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

- 3.1 Restrictions on Development and Use. Covenantor promises to restrict the use of the Property as follows:
- a. Development of the Property shall be restricted to industrial, commercial or office space;
  - b. No residence for human habitation shall be permitted on the Property;
  - c. No hospitals shall be permitted on the Property;
  - d. No schools for persons under 21 years of age shall be permitted on the Property;
  - e. No day care centers for children or day care centers for Senior Citizens shall be permitted on the Property;
  - f. No Owners or Occupants of the Property or any portion thereof shall conduct any excavation work on the Property, unless expressly permitted in writing by the Board. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with all applicable provisions of local, state and federal law;
  - g. All uses and development of the Property shall be consistent with any applicable Board Order or Risk Management Plan, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the

integrity of any cap, any remedial measures taken or remedial equipment installed, and any groundwater monitoring system installed on the Property pursuant to the requirements of the Board, unless otherwise expressly permitted in writing by the Board.

- h. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including, but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the Board.
  - i. The Owner shall notify the Board of each of the following: (1) The type, cause, location and date of any disturbance to any cap, any remedial measures taken or remedial equipment installed, and of the groundwater monitoring system installed on the Property pursuant to the requirements of the Board, which could affect the ability of such cap or remedial measures, remedial equipment, or monitoring system to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the Board shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;
  - j. The Covenantor agrees that the Board, and/or any persons acting pursuant to Board orders, shall have reasonable access to the Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code.
  - k. No Owner or Occupant of the Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Property. All use and development of the Property shall preserve the integrity of any capped areas.
- 3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the restrictions, as set forth in paragraph 3.1, shall be grounds for the Board, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Board to file civil actions against the Owner as provided by law.
- 3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a deed restriction dated as of \_\_\_\_\_, 200\_, and recorded on \_\_\_\_\_, 200\_, in the Official Records of Humboldt County, California, as Document No. \_\_\_\_\_, which Covenant and Restriction imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

ARTICLE IV  
VARIANCE AND TERMINATION

- 4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Board for a written variance from the provisions of this Covenant.
- 4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Property or a portion thereof may apply to the Board for a termination of the Restrictions as they apply to all or any portion of the Property.
- 4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

ARTICLE V  
MISCELLANEOUS

- 5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public.
- 5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To: "Covenantor"*

- CBE, LLC
- c/o TRC Environmental Corporation
- 21 Griffin Road North
- Windsor, CT 06095

*If To: "Board"*

- Regional Water Quality Control Board
- North Coast Region
- Attention: Executive Officer
- 5550 Skylane Boulevard, Suite A
- Santa Rosa, California 95403

- 5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Executive Officer of the Board. This instrument shall be recorded by the Covenantor in the County of Humboldt within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.  
Covenantor: CBE, LLC

By: M H Dodd

Printed Name: Martin H. Dodd

Title: Manager

Date: April 14, 2006

Agency: State of California  
Regional Water Quality Board,  
North Coast Region

By: Catherine E. Kuhlman  
Catherine E. Kuhlman

Title: Executive Officer

Date: April 7, 2006

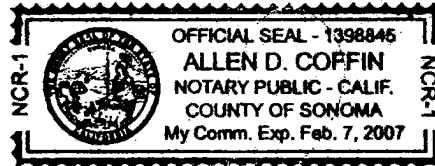
State of California )  
County of sonoma

On April 7, 2006 before me, Allen D Coffin, Notary Public,  
personally appeared CATHERINE E KOHLMAN,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Allen D. Coffin



Connecticut  
State of ~~California~~ )  
County of Hartford

On April 14, 2006 before me, Patricia A. Hampson, Notary Public,  
personally appeared Martin H. Dodd,

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/they executed the same in his/~~her~~/their authorized capacity(ies), and that by his/~~her~~/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Patricia A. Hampson

**PATRICIA A. HAMPSON**  
**NOTARY PUBLIC**  
MY COMMISSION EXPIRES JUNE 30, 2007

## EXHIBIT A

### LEGAL DESCRIPTION OF PROPERTY

That certain real property situated in the State of California, County of Humboldt, City of Eureka, described as follows:

That portion of the Southwest Quarter of the Southeast quarter of Section 21, Township 5, North, Range 1 West, Humboldt Meridian, described as follows:

COMMENCING at a point on the North line of land deeded by William S. Clark et al, to William F. Gibbard, February 20, 1889, by Deed recorded February 29, 1899 in Book 66 of Deeds, Page 260, Humboldt County Records, at a point 18.61 feet West from the Northeast corner thereof, said point also being 2385.71 feet West of the center line of Union Street and 528.2 feet North of the center line of Fourteenth Street formerly Whipple Street in the City of Eureka;

running thence West along said North line of land deeded to Gibbard and parallel to Fourteenth Street, 681.9 feet, more or less, to the West line of State Tide Land Survey No. 72;  
thence following the Westerly line of said tide land survey North  $21\frac{1}{2}$  degrees East 300 feet;  
thence East and parallel with the center line of Fourteenth Street, 683.6 feet more or less, to a point 50 feet distant measured at a right angle Westerly from the center line of the track of the Northern Pacific Railroad Company (formerly San Francisco and Northwestern Railway Company) as same existed at date of June 10, 1904;  
thence Southerly parallel to and distant 50 feet at right angles from the center line of said track, 300 feet, more or less, to the point of commencement.

A.P. No. 003-072-06F